STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT ARBUCKLE, Personal Representative
of the Estate of CLIFTON M. ARBUCKLE,

Appellee,

v.

GENERAL MOTORS LLC,

Appellant.

Supreme Court No._____
Court of Appeals No. 310611

MCAC LC No. 11-000043

ROBERT J. MacDONALD (P54801)
MacDonald, Fitzgerald & MacDonald, PC
Attorney for Appellee
653 S. Saginaw St., Suite 200
Paterson Building
Flint, MI 48502
(810) 234-2204

MICHELLE J. LeBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Ogletree, Deakins, Nash,
Smoak & Stewart, PLLC
Attorneys for Appellant
34977 Woodward Ave., Ste 300
Birmingham, MI 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

APPELLANT GENERAL MOTORS LLC'S
APPLICATION FOR LEAVE TO APPEAL

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STATEMENT IDENTIFYING THE JUDGMENT OR ORDER APPEALED FROM, INDICATING THE RELIEF SOUGHT AND IDENTIFYING THE GROUNDS FOR APPEAL

Appellant, General Motors LLC ("GM"), seeks leave to appeal the Court of Appeals' Opinion, dated February 10, 2015 (**Exhibit 1**), in which the Court of Appeals reversed the May 7, 2012 Order (the "May 2012 Order") entered by the Michigan Compensation Appellate Commission (the "MCAC") in which the MCAC found that GM properly coordinated Clifton Arbuckle's ("Arbuckle") workers' compensation benefits in accordance with MCL 418.354.[1]

Michigan, like most states, considers certain pension and other payments received by workers in calculating workers' compensation benefits due them. Under GM's agreements with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW ("UAW"), GM pays retirees workers' compensation benefitsin an amount that exceeds statutory requirements. This case is the result of GM's partial reduction of workers' compensation payments to its retirees (such payments still exceed statutory requirements) following the expiration of the contractual prohibitions that limited GM's ability to reduce workers' compensation benefits in cases where GM also provided disability-related pension payments and the aggregate of benefits received by the retiree exceeds the retiree's pre-injury earnings. The core issues in this case involve: (1) whether GM properly coordinated workers compensation benefits under MCL 418.354; and (2) whether the methodology employed by GM in calculating the coordination of benefits comported with MCL 418.354. In rendering its Opinion, the Court of Appeals reached beyond its subject matter jurisdiction to decide the case based on its misinterpretation of the terms of the collective bargaining agreement that governed

[1] Arbuckle died while this case was pending before the Court of Appeals. As a result, this case was continued by Robert Arbuckle, as Personal Representative of the Estate of Clifton M. Arbuckle ("Appellee").

GM's calculation of the extra payments allowed to Arbuckle and the scope of a union's authority to bargain collectively on behalf of its retirees. In doing so, the Court of Appeals concomitantly ignored: (1) the clear and unambiguous terms of a Letter of Agreement between the UAW and GM which precluded benefits coordination for only a finite, defined period of time; and (2) the question of whether GM's benefits coordination methodology is valid (which it is). The Court of Appeals erred in each of these respects and failure of this Court to rectify these clearly erroneous rulings will undeniably result in material injustice not only to GM, but will also jeopardize the fundamental relationship between unions and their retirees on the one hand and unions and employers on the other, across the state.

GM therefore respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals' Opinion on the basis that it improperly disregarded the plain termination provisions of the relevant Letters of Agreement and/or that it lacked subject matter jurisdiction to interpret the scope of the UAW's authority to negotiate the terms of its collective bargaining agreements with GM, and reinstate the Order of the Michigan Appellate Commission or, in lieu of peremptory reversal, grant GM's Application for Leave to Appeal.

STATEMENT OF THE BASIS OF JURISDICTION

This Court has jurisdiction to consider GM's Application pursuant to MCR 7.301(A)(2). The Court of Appeals issued its Opinion on February 10, 2015. GM timely filed this Application within forty two (42) days of the date of the Opinion. *See* MCR 7.302(C)(2).

STATEMENT OF QUESTIONS INVOLVED

I. Whether the Court of Appeals reversibly erred when it improperly exercised subject matter jurisdiction over a purely federal question (in violation of the Labor Management Relations Act and well settled law to the contrary) and, in so doing, exceeded the scope of this Workers' Compensation Act case by ruling on the scope of a union's authority to bargain regarding the non-vested rights of its retirees?

The Court of Appeals Answered: "No."

The MCAC Did Not Address the Issue.

GM Answers "Yes."

II. Whether the Court of Appeals clearly erred when it failed to uphold the MCAC's ruling that GM may coordinate retiree disability benefits with state workers' compensation benefits when: (1) MCL 418.354 mandates coordination, unless otherwise prohibited contract; (2) contractual rights, if any, with respect to coordination of workers' compensation benefits are non-vested rights on which employers and unions can negotiate; (3) in 2009, GM and the UAW freely negotiated to remove contractual restrictions against coordination for then-current UAW retirees such as Arbuckle; and (4) the terms of the clear and unambiguous 1990 Letter of Agreement between GM and the UAW, upon which Arbuckle predicates his claim, expired in 1993 in accordance with its own express terms?

The Court of Appeals Answered: "No."

The MCAC Did Not Address the Issue.

GM Answers "Yes."

STATEMENT OF STANDARD OF REVIEW

This Court's standard of review for this Application is governed by MCR 7.302(B)(3) and (5).[2] The issues presented in this Application are reviewed under two (2) standards.

First, questions of law involved in any final order of the MCAC are subject to de novo review. *See DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW 2d 300 (2000).

Second:

> [f]indings of fact made or adopted by the [MCAC] within the scope of its powers are conclusive on appeal, in the absence of fraud, but a decision of the [MCAC] is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework.

Id., at 401-402; *see* MCL 481.861a(14).

[2] "The application must show that . . . (3) the issue involves legal principles of major significance to the state's jurisprudence . . .(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice . . ." MCR 7.302(B)(3) and (5).

INTRODUCTION

As a result of an overreaching and, in part, null and void, decision by the Court of Appeals, this case morphed from a routine workers' compensation claim into an action with the potential to negatively impact the longstanding and critical relationships between unions and their retirees and unions and the employers with which they collectively bargain across the state. The Court of Appeals erred in: (1) rendering a decision on an issue over which it unequivocally lacked subject matter jurisdiction; (2) ruling, in contravention of entrenched legal principles, that a union could not modify the **non-vested** benefits of its retirees; and (3) ignoring both the clear and unambiguous terms of a Letter of Agreement between the UAW and GM which precluded benefits coordination for only a finite, defined period of time; and the question of whether GM's benefits coordination methodology is valid (which it is).

The untenable decision by the Court of Appeals warrants immediate intervention by this Court not only because it is clearly erroneous, but also because it is extremely significant to GM that it realize the significant savings associated with these long recognized uncompetitive business practices and because it involves issues of major significance within the State of Michigan in light of the substantial population of current union members and union retirees residing in the state as well as the large number of Michigan businesses with unionized workforces which stand at the heart of Michigan's economy. The Court of Appeals' decision failed to distinguish between vested benefits (e.g., benefits provided retirees that have been contractually agreed to for the period of retirement) and all other agreements that could impact retirees' treatment (whether with respect to an unvested benefit, courtesy, practice, or administrative issue). In reaching its conclusion, the Court of Appeals ignored all controlling

precedent when it failed to analyze whether the rights in question were vested or non-vested and, instead, simply assumed – mistakenly so – that the rights at issue were vested..

These failures constitute clear errors which will have broad reaching ramifications that will ripple across employers, unions and retirees across the state. Indeed, if the Court of Appeals' decision is upheld, it would, in unprecedented fashion, irrevocably hinder the ability of unions to bargain collectively with Michigan employers on issues that affect their retirees (both to increase benefits and, when necessary, to reduce costs to save current jobs) and employers' concomitant ability to make material and immaterial changes to operations or programs that currently impact retirees.[3] Such a decision could have far reaching unintended consequences not only for GM but for employers and employees across the state. To rectify these errors, GM respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals' Opinion on the basis that it improperly disregarded the plain termination provisions of the relevant Letters of Agreement and/or that it lacked subject matter jurisdiction to interpret the scope of the UAW's authority to negotiate the terms of its collective bargaining agreements with GM, and reinstate the Order of the Michigan Appellate Commission, or, in lieu of peremptory reversal, grant GM's Application for Leave to Appeal.

STATEMENT OF FACTS

This case revolves around the relationship between statutory workers compensation payments, provided for by Michigan law, and contractual disability insurance retirement benefits, negotiated between GM and the UAW and provided for in the resulting collective bargaining agreement and attendant Letters of Agreement.

[3] This includes, for example, right to access certain plants, right to services that by their very nature will change over time, routine administrative and benefits level changes to health care, opportunities to participate in training classes,, pension administration, discount programs, etc.

A. Michigan's Workers' Compensation Program.

Michigan, like its sister states, established a workers compensation program to provide "a means of income maintenance for persons who have met misfortune" as a result of suffering an on-the-job injury. *Franks v White Pine Copper Div*, 375 NW2d 715, 722 (Mich 1985). This program provides an employee who suffers an injury "arising out of and in the course of employment" with the "exclusive remedy" of certain specified compensation from his employer. MCL 418.131, 418.141, 418.301. This compensation is intended to compensate the injured employee not for the injury *per se*, but rather "for the disability, which has been defined as loss of wage-earning capacity." *Franks, supra*, at 722. In short, the purpose of workers' compensation payments is to compensate the injured employee for the reduction in his or her ability to earn a regular income.

In 1981, Michigan's Legislature recognized that "other benefits, such as pensions and social security payments," were—like workers compensation—"also received by the employee and financed by the employer" and "directed to the same objective, income maintenance." *Id.*, at 719 and 722. The Legislature found that these "other public and private wage replacement insurance programs" created a situation in which "many employees now receive wage-loss benefits from two, three, or four different programs … while employees who must contribute to these programs find themselves paying more than once to replace the wages of a single employee." *Id.*, at 723.[4] In this respect, the Michigan Legislature specifically concluded that "[s]uch a situation is contrary to the basic philosophy of Michigan's wage-loss system and discourages some disabled employees from returning to work." *Id.*

[4] Emphasis added and internal citations, quotations, original emphasis and punctuation omitted unless otherwise noted.

To address this juxtaposition, statutory amendments were enacted to require the *coordination* of benefits. Under these amendments, employers are to set off certain other payments to disabled employees against the payment obligations owed under the workers' compensation laws. As the Legislature concluded in enacting these amendments, such coordination "would reduce the overlap between the various public and private wage replacement programs while ensuring adequate wage-loss benefits to injured employees." *Id.*, at 723-24.

Accordingly, the Michigan workers' compensation statute (as amended) now provides that "the employer's obligation to pay or cause to be paid weekly [workers compensation] benefits … **shall be reduced by**" a list of other particular benefits. MCL 418.354(1). Those other benefits—those that must be coordinated with workers compensation payments—include the "after-tax amount of the payments received or being received under … a disability insurance policy provided by the same employer" responsible for paying the workers compensation. MCL 418.354(1)(b). The statute thus expressly requires employers to offset workers compensation payments by amounts paid to disabled retirees under contractual disability insurance policies. (By contrast, and in accordance with the Legislature's stated intent, workers compensation payments may *not* be coordinated with benefits conferred under the federal Social Security Act. *See* MCL 418.354(11).)

The statute does allow that employers may, if they choose, contract around the coordination-of-benefits provision and, instead, agree to pay overlapping benefits. In this respect, MCL 418.354(14) allows that an employer can agree that the payments under a disability pension plan provided by that employer will **not** be coordinated. *See* MCL 418.354(14). Accordingly, Michigan law does not forbid an employer from entering into an

agreement to pay overlapping benefits if it so chooses. However, any payment of non-coordinated, overlapping benefits is solely a creature of private contract.

B. The GM-UAW Collective Bargaining Agreement and Pension Plan.

On September 17, 1990, GM and the UAW executed a supplemental agreement to the 1990 Collective Bargaining Agreement ("1990 CBA") in place between them, establishing an amended pension plan for GM's hourly-rate employees. That pension plan (the "1990 Plan"), which was formally incorporated into the 1990 CBA, entitled any employee who became totally and permanently disabled prior to attaining age sixty five (65), and had at least ten (10) years of credited service, to receive a disability pension.

Although Michigan law presumptively provides for reduction of statutory workers compensation payments to take into account disability insurance retirement benefits under such private plans, GM and the UAW simultaneously executed a Letter of Agreement (the "1990 Letter of Agreement") in which GM agreed that it would **not** coordinate those two distinct payment streams for a finite period of time. *See* 1990 Letter of Agreement, **Exhibit 2**. Specifically, the 1990 Letter of Agreement, which amended the 1990 Plan, contracted that "until termination or earlier amendment of the [1990 CBA], workers compensation for employees shall not be reduced by disability retirement benefits payable under the [1990 Plan]." ***Id***. In other words, GM agreed to go above and beyond the demands of Michigan law, and effectively pay overlapping non-pension benefits — not forever, but only until the 1990 CBA terminated or was amended to provide otherwise.

C. The Amendments to the Collective Bargaining Agreement and Plans.

From 1990 through 2007, GM and the UAW negotiated new CBAs every three (3) years, each with attendant Letters of Agreement which substantially mirrored the 1990 Letter of

Agreement upon which Arbuckle relies. Arbuckle received the benefit of each of these subsequent Letters of Agreement.

In September 2007, in connection with the negotiation and execution of an amended pension plan for GM's hourly-rate employees (the "2007 Plan"), GM and the UAW executed another letter of agreement, this one amending the 2007 Plan (the "2007 Letter of Agreement"). *See* 2007 Letter of Agreement, **Exhibit 3**. The 2007 Letter of Agreement differed in its terms from its predecessors. The 2007 Letter Agreement provided that, for those injured employees who would retire after October 1, 2007, workers compensation payments "shall be reduced by disability retirement benefits payable under the Hourly-Rate Employees' Pension Plan." ***Id.*** Thus, under the 2007 Letter of Agreement, GM would voluntarily continue to pay non-coordinated benefits to those employees who had already retired, but would cease that practice with respect to those who had not yet retired. *See* ***Id.*** Again, the 2007 Letter of Agreement, like its predecessors, expressly stipulated that these commitments would last only "until termination or earlier amendment of the 2007 Collective Bargaining Agreement." ***Id.***

"[I]n 2008 and 2009, GM suffered a steep erosion in revenues, significant operating losses, and a dramatic loss of liquidity, putting its future in grave jeopardy." *In re Gen Motors Corp*, 407 B.R. 463, 476 (Bankr SDNY 2009). Indeed, GM was forced to file for bankruptcy protection. *See Id.* 475-486. Before filing its bankruptcy petition, GM negotiated and executed with the UAW another letter agreement concerning coordination of retiree benefits (the "2009 Letter of Agreement"). *See* 2009 Letter of Agreement, **Exhibit 4**. The 2009 Letter of Agreement an integral part of the 2009 CBA, amended the 2007 Plan to provide that, effective January 1, 2010, GM would completely end its practice of paying non-coordinated benefits. *See* ***Id.*** Beginning in 2010, all workers compensation payments to all retirees (regardless of their dates of

injury or retirement) would be set off, subject to certain limits, by disability insurance retirement benefits under the GM Hourly-Rate Employees' Pension Plan, as authorized by the Michigan's workers compensation statute. *See **Id***.

Even so, the coordination was not total. Under the 2009 Letter of Agreement, GM would reduce a retiree's workers compensation payments only "to the extent that the [employee's] combined workers compensation payments, initial Social Security Disability Insurance Benefit amount, and the initial disability retirement benefit (per week) exceed [the] employee's gross Average Weekly Wage at the time of injury." ***Id***. If these combined income streams exceeded the employee's gross Average Weekly Wage at the time of injury by less than the amount of the disability insurance retirement benefit, then the retiree's workers compensation payments would only be reduced by that lesser amount, not to the full extent permitted by Michigan law. In other words, the coordination would, at most, leave the retiree with an income stream from GM equal to his earnings before the injury. It was a cap which still granted the retiree more than s/he was entitled to receive under the statutory framework of Michigan's workers' compensation program. As explained by Elizabeth LaMarra, GM's Manager of Life Insurance and Disability Plans, the coordination would affect only those employees who, as a result of receiving benefits under various income streams, "were making more money not working than they were working…" Testimony of Elizabeth LaMarra, **Exhibit 5 at p. 8**.

D. Clifton Arbuckle and This Litigation.

Arbuckle, began his employment with GM in 1969. At all times during his tenure with GM, Arbuckle was represented by his union, the UAW. In 1991, Arbuckle was injured during the course of his employment. Having accumulated at least ten years of credited service, Arbuckle was entitled to disability insurance retirement benefits under the 1990 Plan, in force at

the time. Accordingly, on May 1, 1993, Arbuckle began receiving disability insurance retirement benefits in the amount of $169.45 under the terms of the 1990 Plan. On February 25, 1995, Arbuckle was awarded workers compensation benefits at a fixed rate of $362.78 per week, which equaled eighty percent (80%) of his after-tax Average Weekly Wage at the time of his injury. Pursuant to the 1990 Letter of Agreement, GM began to pay Arbuckle full workers compensation payments as well as disability insurance retirement benefits under the 1990 Plan. Arbuckle was also ultimately granted Social Security Disability ("SSDI") benefits in the amount of $238.57 per week.

Between these various benefit streams, Arbuckle was receiving more income not working ($770.80) than he had while working ($655.69). *See* Plaintiff's Exhibit 1 in Support of March 10, 2011 Worker's Compensation Board of Magistrates Opinion. Accordingly, on November 16, 2009, Arbuckle was advised in writing that his workers' compensation benefits would be reduced in accordance with the 2009 Letter of Agreement. *Id.* Moreover, in a letter dated January 19, 2010, GM explained its calculations in detail and advised Arbuckle that "as a result of [these calculations], coordination will apply and your weekly workers' compensation rate will be $262.55 as of January 1, 2010." *See* Plaintiff's Exhibit 2 in Support of March 10, 2011 Worker's Compensation Board of Magistrates Opinion. It is important to note that, under the mandate of coordination contained in MCL 418.354(1), GM was entitled to fully coordinate the $362.78 Arbuckle was receiving in workers' compensation benefits with the $169.45 in disability insurance retirement benefits he was also receiving from GM. Such full coordination would have resulted in a larger reduction of Arbuckle's workers' compensation benefits than the partial coordination effectuated under the 2009 Letter of Agreement.

On July 1, 2010, Arbuckle initiated the instant action with a request for a hearing pursuant to Worker's Compensation Administrative Rules R 408.35, which is also known as a Rule 5 hearing. *See* November 7, 2010 Rule V Order, **Exhibit 6**. In his request for the Rule 5 Hearing, Arbuckle framed his claim against GM as follows:

> [A]rbuckle was found disabled and entitled to wage loss benefits in a decision dated February 24, 1995, issued by Magistrate Lengauer based upon an injury date of June 20, 1991. [A]rbuckle was awarded benefits at $362.78 per week. [GM] recently reduced benefits because of [Arbuckle's] receipt of Social Security Disability benefits. Social Security Disability benefits cannot be used under Michigan law to reduce workers' compensation benefits. We respectively request an Order demanding that benefits be reinstated.

Id. GM responded, in part, that it was in compliance with Michigan law because it was not coordinating Arbuckle's Social Security Disability benefits against his workers' compensation benefits, but rather that GM included Arbuckle's Social Security Disability benefits as part of the overall cap calculation more specifically described in Section C, *supra*. *See* ***Id***.

Before the Court of Appeals rendered its clearly erroneous Opinion, this dispute was adjudicated by three (3) administrative tribunals, each applying various rationales for their ultimate rulings. *See* ***Id***.; March 10, 2011 Opinion of the Workers' Compensation Agency/Board of Magistrates, **Exhibit 7**; May 7, 2012 Opinion of the MCAC, **Exhibit 8**. At issue in this Application is the Court of Appeals' erroneous reversal of the decision issued by the MCAC.

In its May 7, 2012 Order, the MCAC disposed of Arbuckle's claim against GM, stating:

> [i]f, the UAW possessed the authority to bargain for [A]rbuckle, then [*Murphy v City of Pontiac*, 221 Mich App 639, 561 NW 2d 882 (1997)] applies. We find that the Murphy case confirms [GM's] statutory authority to coordinate [Arbuckle's] disability pension based on the changes to the agreement after [Arbuckle] retired . . . Therefore, the magistrate erred when he forbade coordination under *Murphy*.
>
> ***
>
> [a]lternatively, if the later amendments did not bind [Arbuckle] because the UAW lacked the authority to bargain for [him], then the amendments also would not

> protect [Arbuckle]. In that case, [Arbuckle's] agreement with GM expired when the UAW and GM entered a new collective bargaining agreement . . . **When the agreement that Arbuckle actually ratified expired, the prohibition against coordination also expired.** Without the prohibition, [GM] may coordinate all of [Arbuckle's] disability pension. Therefore, coordinating less than the entire pension complies with [Arbuckle's] statutory right.
>
> Finally, [Arbuckle] misinterprets §354(11) by suggesting that it prohibits the coordination in this case. That section mandates that social security (sic) disability payments be considered primary payments crediting the employer's workers' compensation obligation. The section further qualifies when the employer may utilize that consideration. The limitation only applies to restrict the use of social security (*sic*) disability payments as primary payments against workers' compensation obligations. [Arbuckle's] interpretation of the single phrase prohibiting consideration distorts the plain meaning of the entire statute. The statute clearly prevents a double reduction of payments that could lead to the elimination of all payments. **The section does not preclude using the social security (*sic*) disability amount to determine the amount of disability pension to coordinate.**

Exhibit 8, at p. 6 (emphasis supplied).

Arbuckle subsequently appealed the MCAC's May 7, 2012 Opinion to the Court of Appeals. On February 10, 2015, the Court of Appeals issued its Opinion in which it reversed the decision of the MCAC. *See* February 10, 2015 Opinion of the Court of Appeals, **Exhibit 1**. The myriad clear errors made by the Court of Appeals when rendering its Opinion serves as the basis for this Application.

ARGUMENTS

I. The Court of Appeals Committed Clear Error When it Disregarded the Labor Management Relations Act ("LMRA") and Opined on a Purely Federal Question Concerning Whether GM Breached the Letter of Agreement Negotiated Between GM and the UAW[5]

It is undisputed that the amount of Arbuckle's payment under the disability pension plan was never impacted by the Letters of Agreement. It is also undisputed that, even after coordinating Arbuckle's workers' compensation benefits with a portion of the amount he received with the disability pension plan, Arbuckle received more than the Michigan statutory requirements under the Workers' Compensation Act. However, Arbuckle has disguised his breach of contract claim as a workers' compensation claim. As there is no dispute that GM has exceeded the statutory requirements and owes no payment to Arbuckle under the workers' compensation statute, the Court of Appeals' decision can be viewed as nothing other than a determination on a federal claim, e.g., GM breached a collective bargaining agreement (preempted by §301 of the LMRA) or that GM failed to provide a vested benefit (preempted by ERISA).[6] Both claims are governed by federal law.

As a threshold (and dispositive) matter, the Court of Appeals committed reversible error when it disregarded established federal law and perfunctorily ruled that it had subject matter jurisdiction to adjudicate the issue of the scope of a union's authority to bargain on behalf of its

[5] While ruling in favor of GM on the coordination of benefits issue, the MCAC concluded that GM's "jurisdictional objection is irrelevant to our disposition." **Exhibit 8**, at p. 6.

[6] Inherent in the Court of Appeal's Opinion is the Court's fundamental misunderstanding of the concept of coordination. In this respect, it is undisputed that the amount of Arbuckle's disability benefits never changed: The only change was to Arbuckle's workers' compensation benefits under MCL 418.354. To the extent the Court of Appeals sought to render a ruling on the amount of, or entitlement to, disability benefits, the Court of Appeals lacks jurisdiction to do so as this is a federal question expressly preempted by ERISA.

retirees relating to **non-vested** rights.[7] Jurisdiction over this action, which concerns the purported breach of a collective bargaining agreement between General Motors and the UAW (*i.e*. the 1990 CBA) lies exclusively within the federal courts. *See* 29 USC §185(a); *Allis-Chalmers Corp v Lueck*, 471 US 202, 208-212, 105 S Ct 1904, 85 L Ed 2d 206 (1985); *Jones v GM*, 939 F 2d 380, 382 (CA 6 1991); *Garbinski v GM*, 2012 WL 1079924, *2 (ED Mich 2012) (unpublished) ("*Garbinski I*"), **Exhibit 9**; *Simoneau v GM*, 85 Fed Appx 445, 447 (CA 6 2003) (unpublished), **Exhibit 10**. Consequently, the Court of Appeals' Opinion is void as a matter of law. *See Fox v Bd of Regents of the Univ of MI*, 375 Mich 238, 242; 134 NW 2d 146 (1965). At the outset, this Court should vacate the Court of Appeals' Opinion -- and all opinions and orders issued by subordinate administrative tribunals (*e.g*. the MCAC) relating to the scope of a union's authority to bargain – because such questions fall squarely within the LMRA and can only become the exclusive province of federal courts.

Pursuant to 29 USC §185(a):

> [s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 USC §185(a). Critically:

> **[t]he Supreme Court has interpreted this language to require federal pre-emption** (*sic*) of state law-based actions because federal law envisions a national labor policy that would be disturbed by conflicting state interpretations of the same CBA. Pre-emption (*sic*) occurs when a decision on the state claim is inextricably intertwined with consideration of the terms of the labor contract and **when application of state law to a dispute requires the interpretation of a collective bargaining agreement.**

[7] Although the GM challenged the subject matter jurisdiction of the Court of Appeals and the inferior administrative tribunals, GM notes that a question of a court's subject matter jurisdiction to hear a case can be raised and resolved at any time, even on appeal. *See Maxwell v Dep't of Envt'l Quality*, 264 Mich App 567, 574; 692 NW 2d 68 (2005).

Jones, *supra*, at 382 (emphasis supplied). Said another way:

> a suit in state court alleging a violation of a provision of a labor contract must be brought under §301 and be resolved by reference to federal law. A state rule that purports to define the meaning or scope of a term in a contract suit therefore is pre-empted (*sic*) by federal labor law.

Allis-Chalmers Corp, *supra*, at 210.[8] Indeed, "[t]he Supreme Court has recognized the unusually powerful pre-emptive (*sic*) force of §301."*Alongi v Ford Motor Co*, 386 F 3d 716, 723 (2004).

To determine whether §301 completely preempts a plaintiff's state law claim (such as Arbuckle's), the Sixth Circuit utilizes a two-step test. Specifically:

> [f]irst, we examine whether proof of the state law claim requires interpretation of collective bargaining agreement terms. Second, we ascertain whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law. If the right both arises from state law and does not require contract interpretation, then there is no preemption. However, if neither or only one criterion is satisfied, §301 preemption is warranted.

Id., at 724.

Under the two-part test cogently articulated in *Alongi*, *supra*, Arbuckle's claim that GM improperly coordinated his workers' compensation benefits with his disability pension benefits is wholly preempted by §301 of the LMRA. Federal preemption is mandated because the contractual right against benefit coordination, upon which Arbuckle relies, is created, if at all, by the 1990 CBA, **not** state law. Thus, Arbuckle cannot demonstrate that his alleged right to contractual non-coordination of benefits **both** arises from state law (*i.e.* MCL 418.354(14)) **and**

[8] "[T]he dimensions of §301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute so that issues raised in suits of a kind covered by §301 are to be decided according to the precepts of federal labor policy." *Allis-Chalmers Corp*, *supra*, at 219.

does not require interpretation of the 1990 CBA.[9] *See Garbinski I*, *supra*, at *8. Accordingly, the Court of Appeals lacked subject matter jurisdiction to consider Arbuckle's claim. On that basis alone, this Court should grant GM's Application or peremptorily reverse the Court of Appeals.

Despite the overwhelming authority in support of federal preemption, the Court of Appeals, **in two (2) curt sentences**, erroneously disposed of the preemption issue in favor of adjudicating the scope of the UAW's authority to negotiate with GM. According to the Court of Appeals, federal preemption does not apply to Arbuckle's claim simply "because the present case originated as a workers' compensation issue and the CBA was raised as a defense**." Exhibit 1**, at p. 7. In so holding, the Court of Appeals misapplied the preemption principles enunciated in *Caterpillar, Inc v Williams*, 482 US 386, 107 S Ct 2425, 96 L Ed 2d 318 (1987), the only authority it cited, and thereby committed clear error.[10] In reality, even a cursory Caterpillar reveals not only that it is factually distinguishable, but also that its holding was misapplied by the Court of Appeals.

In *Caterpillar*, employee plaintiffs raised state law breach of contract claims against their employer based upon contracts **independent** of any collective bargaining agreement. Notably, the contracts at issue in that case were purportedly formed while the plaintiffs held management

[9] Contractual interpretation of the 1990 CBA is necessary to adjudicate this matter because absent the language of the 1990 Letter of Agreement, Michigan law mandates coordination of workers compensation benefits, unless the union and employer otherwise bargain away the right to coordinate. *See Smitter v Thornapple Twp*, 494 Mich 121, 125; 833 NW 2d 875 (2013). Importantly, the 1990 Letter of Agreement, upon which Arbuckle relies to establish the prohibition against coordination of his workers' compensation benefits, is an integral part of the 1990 CBA.

[10] The cursory fashion in which the Court of Appeals disposed of GM's federal preemption argument is inconsistent with its own prior ruling that "[a] party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger v Berger*, 277 Mich App 700, 712; 747 NW 2d 336 (2008).

positions ***outside*** the coverage of any collective bargaining agreement. *See Caterpillar*, *supra*, 388-390. As a defense to the plaintiffs' breach of contract claims (and in support of removal to federal court), Caterpillar argued that plaintiffs' independent contracts were merged into and superseded by the company's collective bargaining agreement to which plaintiffs were bound before they became managers and after again they were downgraded from their management positions. *See Id.*, at 389-390. Finding in favor of plaintiffs, the Supreme Court denied Caterpillar's efforts to remove the case to federal court, ruling that a defendant cannot transform a state law claim into a federal action merely by injecting a federal question (*i.e.* preemption) as a defense. *See Id.*, at 398-399; **Exhibit 8**, at p. 7. However, the Supreme Court also drew an important distinction:

> **[w]hen a plaintiff invokes a right created by a collective-bargaining (sic) agreement, the plaintiff has *chosen* to plead what we have held must be regarded as a federal claim . . .**

Caterpillar, *supra*, at 399 (italics in original).

Here, Arbuckle plainly asserts that GM violated MCL 418.354 by coordinating his workers compensation benefits **in breach of the 1990 CBA**. The Court of Appeals erred when it ignored the significant distinction between an affirmative breach of contract claim grounded in federal law (*i.e.* breach of the 1990 CBA), such as Arbuckle's, and a federal question raised solely in a defensive posture, as in *Caterpillar*, *supra*. This error must not be allowed to stand.

II. The Court of Appeals Committed Clear Error When it Ruled That GM Could Not Coordinate Arbuckle's Workers' Compensation Benefits.

A. By Default, Coordination of Benefits is Mandatory in Michigan.

In Michigan, by default, coordination of a retiree's workers' compensation benefits with his or her disability benefits, absent certain limited exceptions, is mandatory. *See* MCL 418.354 (stating "[e]xcept as otherwise provided in this section, the employer's obligation to pay or cause

to be paid weekly benefits . . . **shall** be reduced . . .") [11]; *Smitter*, *supra*, at 126 ("We hold that the coordination of benefits is mandatory . . .").[12] MCL 418.354 (Coordination of Benefits):

> applies if an employee receives worker's compensation benefits at the same time he receives pension or retirement payments pursuant to a plan or program maintained or established by an employer.
>
> ***
>
> MCL 418.354 provides for a reduction in an employer's obligation to pay benefits if that employer provides the employee a pension. This reduction is clearly premised on the fact that the employer is providing another wage benefit to the employee; the statute *allows the employer* to coordinate that benefit with its obligation to pay worker's compensation wage-loss benefits to the employee.

Smitter, *supra*, at 135-136 (italics in original).

Although coordination of benefits is mandatory by default, an employer may contract either to refrain from or to limit benefit coordination. Pursuant to MCL 418.354(14):

> [a]ny disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated . . .

MCL 418.354(14). This is precisely what occurred when GM and the UAW entered into the 1990 Letter of Agreement in which GM agreed not to coordinate worker's compensation benefits with disability retirement benefits for a finite period (*i.e.* a maximum of 3 years). In this respect, GM agreed only that:

> [p]ursuant to Subsection 354(14) of the Michigan Workers Compensation Act, as amended, until termination or earlier amendment of the 1990 Collective Bargaining Agreement, workers compensation for employees shall not be reduced

[11] "When construing a statute, the Court's primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute. If the language of the statute is unambiguous, the Legislature is presumed to have intended the meaning expressed." *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420; 662 NW 2d 710 (2003).

[12] "The coordination of benefits is mandatory, not discretionary, and reduces an employer's obligation to pay weekly wage loss benefits as a matter of law." *Smitter*, *supra*, at 138.

by disability retirement benefits payable under the Hourly-Rate Employes (*sic*) Pension Plan.[13]

Exhibit 1.

Arbuckle began receiving disability retirement benefits on May 1, 1993. Under the terms of the 1990 Letter of Agreement between GM and the UAW, GM agreed not to coordinate the monies Arbuckle received under the workers' compensation statute with the monies he received under the 1990 disability retirement plan beginning on the date on which Arbuckle retired, but continuing only until the 1990 CBA terminated or was amended. **Exhibit 2**. The 1990 CBA terminated on November 14, 1993 some 6½ months after Arbuckle began receiving benefits under the 1990 Plan.

B. GM and the UAW Have the Power to Alter Non-Vested Contractual Rights of Contract Retirees Through Collective Bargaining and The Court of Appeals Committed Clear Error When It Assumed Arbuckle's Non-Vested Benefit Against Coordination Was a Vested Benefit

Although retired union workers are no longer active members the bargaining unit, it is well-settled, as matter of law, that unions have the power to bind their retirees during collective bargaining negotiations with respect to **non-vested** retiree benefits. *See Allied Chemical & Alkali Workers, Local 1* v *Pittsburgh Plate Glass Co*, 404 US 157, 171 n 11 and 181 n 20, 92 S Ct 383, 30 L Ed 2d 341 (1971); *Williams v WCI Steel Co, Inc*, 170 F 3d 598, 605 (CA 6 1999); *Toensing v EA Brown*, 528 F 2d 69, 72 (CA 9 1975); *Sparks v Ryerson & Haynes, Inc*, 638 F Supp 56, 60 (ED Mich 1986); *Garbinski v GM*, 521 Fed Appx 549 (CA 6 2013) (unpublished) ("*Garbinski* II), **Exhibit 11**; *Garbinski* I, *supra*. Consistent with this immutable principle:

[13] At the time of the 1990 CBA GM and the UAW negotiated and entered into new collective bargaining agreements every three (3) years, which terminated and superseded the prior collective bargaining agreement. Following the 1999 Collective Bargaining Agreement between the UAW and GM, agreements have been bargained every four (4) years (*i.e.* 2003, 2007, 2011 and 2015)

> [a] union may choose to **bargain away non-vested retiree benefits** in future negotiations in favor of more compensation for active employees.

Sparks, *supra*, at 60.

While unions may bargain with employers to modify or even strip retirees of **non-vested** benefits, the same is not true for retiree benefits that have **vested**. *See Williams*, *supra*, at 605; *Toensing*, *supra*, at 72; *Sparks*, *supra*, at 60. Not surprisingly, **vested** retirement benefits are sacrosanct. *See Williams*, *supra*, at 605 ("While a union may bargain away non-vested retiree benefits . . . it may not do such with the vested rights of its retirees."); *Toensing*, *supra*, at 72 ("If the union does undertake to represent retirees, its duty of fair representation requires that their vested retirement benefits not be disturbed."). By providing retirees with substantial protection for their vested retirement benefits, retirees are protected during collective bargaining even though they are not represented at "the table." *Toensing*, *supra*, at 72.[14] Therefore, the critical issue when analyzing whether a union and employer may bargain away retiree benefits is simple: are the subject benefits in question vested or non-vested?

(i). The Court of Appeals Clearly Erred in Assuming that Arbuckle had any Vested Contractual Rights to Non-Coordination

Whether retiree benefits are "vested depends on the intent of the parties." *Garbinski* I, *supra*, at *3. Importantly:

> [b]ecause **vesting of welfare plan benefits is not required by law**, an employer's commitment to vest such benefits is not to be inferred lightly; the intent to vest must be found in the plan documents and must be stated in clear and express language.

[14] "This does not mean that when a union bargains for retirees . . . the retirees are without protection. Under established contract principles, vested retirement rights may not be altered without the pensioner's consent." *Toensing*, *supra*, at 72.

See M&G Polymers USA, LLC v Tackett, 135 S Ct 926, 937 (2015) (emphasis supplied). Courts interpret collective bargaining agreements, such as the 1990 CBA, utilizing fundamental principles of contract law. *See Id., at*, 933. When the terms of a collective bargaining agreement "are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent." *Id.*[15]

The Court of Appeals' belief that the 1990 Letter of Agreement grants him a perpetual vested right against the coordination of his workers' compensation benefits with his disability pension is simply wrong. The 1990 Letter of Agreement (*i.e.* a written contract between GM and the UAW), however, contains explicit durational language demonstrating that neither the UAW nor GM intended to vest Arbuckle's claimed contractual right against coordination.

Specifically, the 1990 Letter of Agreement states:

> [p]ursuant to Subsection 354(14) of the Michigan Workers Compensation Act, as amended, **until termination or earlier amendment of the 1990 Collective Bargaining Agreement**, workers compensation for employees shall not be reduced by disability retirement benefits payable under the Hourly-Rate Employes (sic) Pension Plan.

Exhibit 2 (emphasis supplied). The limiting language in the 1990 Letter of Agreement (*i.e.* "until termination or earlier amendment") "expressly repudiates an intent that the right should vest, and the language itself was included in the same sentence regarding coordinated benefits." *Garbinski I*, *supra*, at *4. No reasonable reading of the 1990 Letter of Agreement supports an alternate interpretation. *See Id.* Arbuckle's claimed benefit (*i.e.* the contractual right against coordinating benefits) did not vest by operation of the 1990 Letter of Agreement "because the plain language used cannot be reconciled with an intent to vest." *Id.* Both the 2007 and 2009 Letters of Agreement, discussed *supra*, contain precisely the same limiting durational language

[15] "In this endeavor, as with any other contract, the parties' intentions control." *M&G Polymers*, *supra*, at 933.

as that in the 1990 Letter of Agreement. Therefore, like the 1990 Letter of Agreement, neither the 2007 nor the 2009 Letters of Agreement create any vested right against coordination of benefits in favor of Arbuckle. *See* **Exhibits 3 and 4**.

(ii). The Court of Appeals Clearly Erred in Failing to Recognize that GM and the UAW had the Ability to Contract Away Non-Vested Rights as a Matter of Law[16]

Absent a vested right prohibiting the coordination of Arbuckle's workers' compensation payments with his disability benefits, the UAW was free to negotiate away any non-coordination benefits Arbuckle may have had when it entered into the 2009 Letter of Agreement with GM. Contrary to the Court of Appeals' clearly erroneous conclusion, Arbuckle did not need to authorize the UAW to act as his representative before it bargained away a non-vested right against benefit coordination. *See* **Exhibit 1**, at p. 6.[17] Because the UAW and GM bargained away Arbuckle's (and other retirees') non-coordination benefits in the 2009 Letter of Agreement, the coordination of benefits mandated by MCL 418.354 controls, as discussed in detail above.

That the Court of Appeals attempted to buttress its patently misguided conclusion by stating "[h]ere there was no bargaining between **[Arbuckle] and the UAW** with regard to the allowance of coordination" further underscores the Court of Appeals' misunderstanding of the unilateral rights of unions to negotiate away non-vested benefits on behalf of retirees. ***Id***. Whether Arbuckle ever bargained with the UAW is wholly irrelevant to whether the UAW could

[16] Although the MCAC ultimately found in favor of GM on the coordination of benefits issue, it determined that the "UAW's authority to bargain for plaintiff does not alter the result in this case." **Exhibit 8**, at p. 6. Correctly so, the MCAC did not analyze whether the UAW could bargain away non-vested benefits on behalf of its retirees. Correctly so, the MCAC did, however, remark that in *Garbinski I*, the United States District Court Eastern District of Michigan "found the [UAW] could bargain for retired members." ***Id***.

[17] To justify its flawed conclusion, the Court of Appeals stated "[i]ndeed, the record contains no evidence that [Arbuckle] authorized the UAW to act as his representative to modify the 1990 agreement under which he retired." **Exhibit 1**, at p. 6.

negotiate with GM to reduce or eliminate a retiree's non-vested benefit. Absent agreement with the UAW on this topic, GM always had the unilateral right to change non-vested benefits afforded retirees. The contract prohibiting GM's right to do so expired in accordance with its express termination provision. While GM's rights remained limited by the 2009 Letter of Agreement, GM acted within its rights by reducing the workers' compensation payments provided to Arbuckle, and GM had no lifetime commitment to Arbuckle to continue providing payments at levels exceeding Michigan's statutory requirements.

C. As a Matter of Black Letter Michigan Contract Law, The Prohibition Against Coordination of Benefits in the 1990 Letter of Agreement Expired in 1993 When GM Entered Into a New CBA with the UAW.

Setting aside for a moment the federal preemption issue, the MCAC correctly determined that, as a matter of state contract law, GM had the right to coordinate Arbuckle's workers' compensation and disability benefits even if the UAW lacked authority to bargain on Arbuckle's behalf. *See* **Exhibit 8**, at p. 6. In support of its ruling, the MCAC reasoned as follows:

> [a]lternatively, if the later amendments did not bind [Arbuckle] because the UAW lacked the authority to bargain for [him], then the amendments also would not protect [Arbuckle]. In that case, [Arbuckle's] agreement with GM expired when the UAW and GM entered a new collective bargaining agreement . . . **When the agreement that Arbuckle actually ratified expired, the prohibition against coordination also expired.** Without the prohibition, [GM] may coordinate all of [Arbuckle's] disability pension. Therefore, coordinating less than the entire pension complies with [Arbuckle's] statutory right.

Id. (emphasis supplied).

Significantly, the MCAC's ruling comports with the principle, discussed, *supra*, that benefit contracts (such as the 1990 Letter of Agreement) are interpreted using fundamental tenets of contract law (*i.e.* clear and unambiguous language is dispositive of the parties' intent). *See e.g. M&G Polymers*, *supra*, at 933. Moreover, the MCAC's proper decision is in line with the

Supreme Court's determination that **"contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."** *Id*., at 932.

As discussed above in the section regarding the non-vesting of Arbuckle's right against coordination of benefits, the 1990 Letter of Agreement expressly provides that it only remains in full force and effect **"until termination or earlier amendment of the 1990 Collective Bargaining Agreement." Exhibit 2**. Applying well-settled concepts of contract interpretation, as mandated by the authorities cited above, the clear and unambiguous language of the 1990 Letter Agreement conclusively demonstrates that GM and the UAW only intended to create, at most, a three (3) year contractual right against coordination of benefits because, at the time, GM and the UAW entered into new collective bargaining agreements every three (3) years. Each new collective bargaining agreement superseded and terminated its predecessor agreement. Thus, the 1990 CBA terminated on November 15, 1993 (the effective date of the 1993 collective bargaining agreement between the UAW and GM.[18] The prohibition against coordinated benefits contained within the 1990 Letter of Agreement ceased with the termination of the 1990 CBA. This then triggered GM's obligation, under MCL 418.354 to coordinate Arbuckle's benefits. *See M&G Polymers*, *supra*, at 932; MCL 418.354.

The Court of Appeals erred in rejecting the MCAC's ruling as "an untenable conclusion" because it plainly misunderstood that **the durational limiting language in the 1990 Letter of Agreement is tied to the expiration of the 1990 CBA, not the pension plan**. **Exhibit 1**, at p. 6.

[18] The Court of Appeals took great pains to distinguish *Murphy v City of Pontiac*, 221 Mich App 639, 561 NW 2d 882 (1997) from the facts of this case. *See* **Exhibit 1**, at p. 6. Distinguishing *Murphy*, the Court of Appeals noted that "the crucial distinction between *Murphy* and the present case is that in *Murphy* the parties had stipulated that the pension plan may be changed by collective bargaining or by ordinance agreement. There was no such stipulation in the present case." ***Id***. Because Arbuckle's right against coordination terminated, by operation of law, when the 1990 CBA expired, the absence of any such stipulation by the parties is meaningless.

Apparently, the Court of Appeals conflated GM's single continuous pension plan (subject to amendment) with the finite terms of each successive collective bargaining agreement between GM and the UAW. *See **Id***. As set forth above, the 1990 Letter of Agreement, which temporarily prohibited the coordination of Arbuckle's benefits, only remained in force **"until termination or earlier amendment of the 1990 Collective Bargaining Agreement." Exhibit 2.** Whether Arbuckle entered into a new pension plan with GM (which he did not) is wholly irrelevant to the disposition of this case. The Court of Appeals erred when it found that issue dispositive. *See* **Exhibit 1**, at pp. 6-7.

Because of its failure to recognize that the term of the 1990 Letter of Agreement does not affect disability pension benefits, the Court of Appeals mistakenly, and without jurisdiction, believed that the payments in this case were vested. They were not. Instead, these overlapping payments expressly terminated with the termination of the 1990 CBA **not** the pension plan. The Court of Appeals erroneously found that Arbuckle's contractual right to non-coordination did not expire because "[t]here is no indication that defendant entered into any *new* agreement with plaintiff. There were amendments or attempted amendments, but not terminations." ***Id***. This reference by the Court of Appeals is, however, to the pension plan, **not** the 1990 CBA. The Court of Appeals committed clear error when it failed to recognize that the duration of the overlapping payments were tied to the 1990 Letter of Agreement (not the disability pension plan) and the 1990 Letter of Agreement expired pursuant to its own clear and unambiguous terms. Accordingly, this Court should adopt the cogent and correct reasoning of the MCAC Opinion, which is firmly-grounded in immutable principles of Michigan contract law, and reverse the Court of Appeals' Opinion as to GM's ability to coordinate Arbuckle's benefits.

If this Court reverses the Court of Appeals' Opinion as to whether GM has the right to coordinate Arbuckle's benefits (either because the UAW and GM properly bargained for coordination or because the 1990 Letter of Agreement expired), it should adopt the MCAC Opinion as to the methodology GM may employ when it coordinates such benefits. Specifically, GM may utilize Arbuckle's SSDI payments (from the federal government) as part of an overall formula to cap the amount of his union disability benefits which would then coordinate with his state workers' compensation payments. *See* **Exhibit 8**, at p. 6.[19] The MCAC Opinion is consistent with the Opinion of the Workers' Compensation Agency/Board of Magistrates, which stated "[t]here is no prohibition against considering [SSDI payments] in order to reduce the amount of pension coordination the employee experiences." **Exhibit 7**, at p. 6; *see* ***Id.***, at p. 7.

CONCLUSION

The clearly erroneous decision of the Court of Appeals, while unpublished, has ramifications far beyond the "four corners" of the opinion itself. In addition to rectifying the material injustice foisted upon GM by the Court of Appeals' flawed opinion, this Court's intervention is necessary: (1) to preclude an opinion, which the Court of Appeals lacked subject matter jurisdiction to render, from becoming a part of this state's jurisprudence; and (2) to vacate a decision that, at its core, stands for the erroneous proposition that a union cannot bargain to change the non-vested benefits of its retirees and will reverberate across the whole of Michigan's unionized workforce as well as the employers collectively bargaining with that workforce. Consequently, GM therefore respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals' Opinion on the basis that it lacked subject matter jurisdiction to interpret

[19] The Court of Appeals did not specifically address the issue of how GM could correctly coordinate Arbuckle's benefits. *See* **Exhibit 1**. To the extent the Court of Appeals Opinion reverses the entirety of the MCAC Opinion, the calculation endorsed by the Workers' Compensation Agency/Board of Magistrates remains intact.

the scope of the UAW's authority to negotiate the terms of its collective bargaining agreements with GM, and reinstate the Order of the MCAC or, in lieu of peremptory reversal, grant GM's Application for Leave to Appeal.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, PLLC

By: s/Michelle J. LeBeau
MICHELLE J. LEBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Attorneys for Appellant
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

Dated: March 24, 2015

PROOF OF SERVICE

The undersigned states that on March 24, 2015, she served copies of *Defendant-Appellant's General Motors LLC's Application for Leave to Appeal* and this *Proof of Service* via electronic and U.S. mail upon Robert J. MacDonald at lawyers@disabledworker.net.

s/Michelle J. LeBeau
Michelle J. LeBeau

STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT ARBUCKLE, Personal Representative
of the Estate of CLIFTON M. ARBUCKLE,

Appellee,

v.

GENERAL MOTORS LLC,

Appellant.

Supreme Court No._____
Court of Appeals No. 310611

MCAC LC No. 11-000043

ROBERT J. MacDONALD (P54801)
MacDonald, Fitzgerald & MacDonald, PC
Attorney for Appellee
653 S. Saginaw St., Suite 200
Paterson Building
Flint, MI 48502
(810) 234-2204

MICHELLE J. LeBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Ogletree, Deakins, Nash,
Smoak & Stewart, PLLC
Attorneys for Appellant
34977 Woodward Ave., Ste 300
Birmingham, MI 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant-Appellant's Application for Leave to Appeal will be brought on for hearing on Tuesday, April 14, 2015, or at a time and date to be set by the Court.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, PLLC

By: s/Michelle J. LeBeau

MICHELLE J. LEBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Attorneys for Appellant
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

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Defendant-Appellee.

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BWDC Order #031411019

ROBERT J. MacDONALD (P54801)
MacDonald, Fitzgerald & MacDonald, PC
Attorney for Appellant
653 S. Saginaw St., Suite 200
Paterson Building
Flint, MI 48502
(810) 234-2204

MICHELLE J. LeBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Ogletree, Deakins, Nash,
Smoak & Stewart, PLLC
Attorneys for Appellee
34977 Woodward Ave., Ste 300
Birmingham, MI 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

NOTICE OF THE FILING OF AN APPLICATION FOR LEAVE TO APPEAL

WHEREFORE, Defendant-Appellee, General Motors, LLC, Self-Insured ("GM" or "Appellee"), through its attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, PLLC, hereby notifies this Court that it has filed an Application for Leave to Appeal this Court's February 10, 2015 Opinion *per curiam* with the Michigan Supreme Court.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, PLLC

By: s/Michelle J. LeBeau

MICHELLE J. LEBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Attorneys for Defendant-Appellee
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

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ROBERT J. MacDONALD (P54801)
MacDonald, Fitzgerald & MacDonald, PC
Attorney for Appellant
653 S. Saginaw St., Suite 200
Paterson Building
Flint, MI 48502
(810) 234-2204

MICHELLE J. LeBEAU (P51440)
GREGORY M. KRAUSE (P67142)
Ogletree, Deakins, Nash,
Smoak & Stewart, PLLC
Attorneys for Appellee
34977 Woodward Ave., Ste 300
Birmingham, MI 48009
(248) 593-6400
michelle.lebeau@ogletreedeakins.com
gregory.krause@ogletreedeakins.com

PROOF OF SERVICE

The undersigned states that on March 24, 2015, she served copies of Defendant-Appellee's *Notice of the Filing of an Application for Leave to Appeal* and this *Proof of Service* via electronic and U.S. mail upon Robert J. MacDonald at lawyers@disabledworker.net.

s/Michelle J. LeBeau
Michelle J. LeBeau